



Review of the NSW Rail Access
Undertaking

Public Hearing Transcript

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Transport >>

Tribunal Members

The Tribunal members for this review are:

Carmel Donnelly PSM, Chair
Deborah Cope
Sandra Gamble

Members of the Secretariat for this review are:

Jessica Robinson, Melanie Mitchell, Matthew Tsikrikas and Jacqueline Serkowski

Enquiries regarding this document should be directed to a staff member:

Melanie Mitchell (02) 9113 7743
Jessica Robinson (02) 9290 8405

The Independent Pricing and Regulatory Tribunal

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Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

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Review of the NSW Rail Access Undertaking

1.1 Housekeeping and agenda

Ms Coco: That felt like a really quick 2 minutes but my phone assures me it is 2 minutes past 10 so we will all commence. Thank you very much.

Good morning everyone. Welcome to today's public hearing. It's really great to have so many people joining us certainly in person but also online as well. My name is Michelle Coco. I am the Acting Chief Executive Officer (CEO) for the Independent Pricing and Regulatory Tribunal (IPART). I'll be facilitating today's public hearing. So I'll start with a few housekeeping notes.

For those attending here in Sydney - welcome, please wait for the mic to be handed to you before speaking during the Q&A sessions. We would appreciate it if when speaking, you could state your name and your organisation for our records and so everyone knows who is speaking.

For those attending online also very big welcome to you. Can you please keep your microphone muted when you're not speaking to avoid feedback and background noise. We encourage you to keep your cameras on if your internet connection is capable of it and up for it. And if you're comfortable with doing so as well, it helps us all to connect, particularly when we have people physically here in Sydney as well as online.

To ensure that we have an accurate record of today's discussion, the hearing is being recorded. live to YouTube. It won't be made publicly available until after the event. We will place a copy of the transcript, as well as the link to the YouTube recording on our website in a few days.

Being a public hearing, the media and others present today are free to publish and refer to what is being said during the event. So please do keep that in mind. But aside from that, we encourage open comments and discussion.

We also want to take the opportunity to remind everyone that we have a responsibility to ensure a respectful environment today, so that everyone feels safe to share their views, and we thank you in advance for this.

Today's public hearing will have 4 sessions based around the key areas that we've made draft recommendations on. We'll open each session with a short presentation and some prompt questions for discussion. I will then go around the room and ask participants to comment on the topic, and by room I mean the physical room as well as the online room. So no one misses out. This will be followed by the opportunity for everyone to ask questions and discuss comments made by other participants. Everyone is again encouraged to share views or ask questions.

After session 2 we'll take a short 15-minute break, and we'll then commence sessions 3 and 4. At the end there will be time for participants to raise any other matters that we have not discussed before we wrap up with closing remarks and next steps.

Our in-person attendees are then invited to stay for a half hour lunch, where you will have further opportunity to speak with the chair and the IPART Secretariat. So thank you very much.

The only other bit of housekeeping I have for people in the room is if you are in need of some wi-fi, there is the SMC free wi-fi network, and the password is all lowercase. I love SMC, all one word "IloveSMC". Thank you very much. I'll now pass over to IPART's Chair Carmel Donnelly to start the hearing.

1.2 Welcome and Acknowledgement of Country

Ms Donnelly: Thank you Michelle and good morning everybody. Thank you for joining us. So, as Michelle said, I'm Carmel Donnelly I'm the Chair of the Independent Pricing and Regulatory Tribunal known as IPART for short. And joining us today for the hearing are fellow Tribunal members Sandra Gamble and Deborah Cope, who are both joining us online, and as you can see it's a hybrid meeting in that way.

Let me start with an acknowledgment of country and acknowledge the traditional custodians of the land on which we're meeting today both the Gadigal people of the Eora nation where we have the in-person hearing and from whichever lands you're joining us for those people online. We pay respects to elders, past and present, and all aboriginal colleagues and customers and stakeholders.

So welcome, really appreciate you making the time to join us for this public hearing. It's an important part of the consultation for our review of the rail access undertaking and we value feedback and input. We're looking forward to a very constructive discussion. So thank you very much for making the time. We at IPART very much here to ask questions, answer questions, and listen, and in that vein I will just let you know we have some of the IPART team here. We have Fiona Towers, Jess Robinson, Melanie Mitchell, Matthew Tsirikas, Jacqueline Serkowski, and Mike Smart, who is our Chief Economist. There are other team members and all sorts of people behind the scenes making the audio visual, and so on work.

I'd like to just make a few comments to set the scene. So the rail access undertaking that we're reviewing has been in place for 20 years or so and the world has obviously changed in that time we all know that.

Looking forward to the future we are expecting in NSW to see significant increases in freight volumes. And it is really important for the people of NSW that train operators are able to make and freight transport people are able to make the best modal choice. There are obvious benefits to the community in terms of reducing congestion on the roads and environmental impacts, and for train operators and their customers it's important that they are able to access the rail network on fair and reasonable terms.

And at the same time we're obviously going to need the freight transport and passenger movements to be able to operate cohesively and optimally together. So we're looking for the review to come forward with a framework that provides the right commercial incentives for train operators and access providers to negotiate efficient and effective access to the network.

We're looking for a network that is used efficiently and attracts efficient investment in rail capacity that is responsive to market changes in climate change and is robust to the things we don't know are going to happen yet and also, we want to have access providers and train operators able to make informed, timely efficient choices, so that we end up with optimal outcomes, both for the businesses and their customers, but also for NSW as a whole.

So we've consulted extensively. We've had a number of submissions to earlier papers that we released. And this is an important part of that consultation. We're going to cover the 32 recommendations that we've put in our draft report. But we're also very much inviting input from you.

The particular objectives that we have for the public hearing today are very much to listen and to get feedback on the draft recommendations. It would be useful to know which of the areas might be generally supported, and which are the ones most important for us to examine in more detail and do some more work on before we produce the final report.

It is your opportunity to raise issues that we might have missed. So do feel free to do that, to ask questions of the Tribunal and the IPART team. But it's also going to be an important opportunity for the Tribunal members to ask questions and clarify, so that we are fully informed, and considering everything that's relevant.

So today will help us, everything that's said today in developing our final recommendations that we're aiming will be robust for the future. Perhaps not another 20 years, but that will be for others no doubt to decide. But certainly we want something that is going to be robust into the future and meet stakeholder needs into the future.

So with that I'm going to invite Melanie Mitchell to take over and introduce our first session with a little presentation, and then we're going to move to some questions and discussion, and we'll do that several times through the day as you've seen on the agenda. Thank you.

Session 1 – Form of regulation

1.3 IPART presentation

Ms Mitchell: Thank you, Carmel. So this first session is sort of about the broader form of regulation. Throughout our review stakeholders have generally told us that they prefer the existing 'negotiate-arbitrate' method of seeking rail access to other perhaps more intrusive methods of regulation and this is largely because the parties to an agreement are better informed than a regulator about their own costs and service requirements, and they can negotiate an agreement that reflects their own commercial interests.

However, this can be inefficient where the access seeker doesn't have enough information, for example, about the costs, prices, available capacity, and network performance to make efficient access decisions. Where the negotiating parties take too long to respond to information or service requests, and where there aren't clear obligations on parties to undertake actions or provide relevant information.

So these are all problems that stakeholders have told us exist with the current framework. In our draft report we've proposed to maintain the current negotiate-arbitrate form of regulation. But we've recommended that it would be beneficial to have a clearer distinction between the high-level obligations that apply to all access providers and access seekers which should be contained in the Transport Administration Act and its regulations and then the more detailed terms and conditions of access that are specific to individual networks or providers in separate undertakings. So this would be the instrument that sets out how access providers implement those high-level obligations.

So we've recommended that the obligations that would apply to all access providers or seekers through legislation, should include:

- that both parties must negotiate in good faith
- requiring access providers to disclose more information than they currently do about costs, services, prices, network development and performance, as well as making this more readily available by publishing it, rather than having the onus on the access seeker to request it
- having statutory timeframes for key steps in the process
- and having an automatic trigger for dispute resolution, if the maximum time frame is breached without prior mutual agreement between the parties
- we've recommended offering conciliation as a lower cost form of dispute resolution before proceeding to arbitration
- and recognising collective negotiations and arbitrations where lawful, and where there is sufficient common interest among parties.

So in addition, we've recommended that IPART would provide more guidance on how the arbitration process works, and how it makes certain decisions, for example, about when it would refer a matter to a commercial arbitrator.

So we are keen to hear your feedback today on whether these draft recommendations:

- would provide greater clarity about what parties must do and accountability for those actions?
- whether they reduce that information asymmetry that you've told us about that's faced by access seekers in negotiating access?
- and whether they would help reduce the costs, risks, and uncertainties associated with negotiating access and resolving disputes?

1.4 Questions and discussion

Ms Coco: Thank you, Melanie. I'd now like to open the first session discussion to the floor. Again, I encourage everyone to share your views and ask questions. If you are in the room and you have a question please let us know by raising your hand, and we will come to you with the mic.

If you are joining us online and would like to ask a question can you please enter your details in the chat box in Zoom, or you can raise your hand. You can use the raise your hand function in Zoom as well, and we'll look out for that and come to you when it's your turn.

Now I'm going to explain and apologise in advance for looking at my phone. I'm monitoring questions via my phone and via my laptop. So apologies, if that's a little bit distracting for you and as a reminder, when you ask your question, can you please say your name and the organisation you are from. Thank you.

I might start by just asking some of the organisations who've joined us today if they've got any comments or questions, so I'll just still whip around first. So, TAHE.

Ms Colin: Everyone hear me. Good morning everyone. So my name is Benedicte Colin and I'm the CEO of Transport Asset Holding of NSW which I'll call after TAHE. I'm here joined by my colleagues, and also Adrian Kemp from Houston Kemp, who's provided some independent advice and also the team from Transport for NSW. Also I would like to acknowledge the traditional owners of the land on which we meet. A few comments and maybe one or two questions or issues for consideration.

First one is that just really would like to commend IPART for undertaking this review. As you both pointed Michelle and Carmel and Melanie, this is a very old instrument and time has changed. The economy has changed with volumes, and the nature of the products that are being transported on the networks have changed also and so very timely.

Very timely also with the formation of TAHE. So as some of you will know we are a state-owned corporation. We've been converted from the old RailCorp into being a state-owned cooperation since the first of July 2020. And what that has done is that it has probably given a dedicated team and a much more focus on investment and a voice to investment into the network.

So our mandate is to be the strategic owner of the some of the tracks on which the freight comes on, but it gives us a focus on strategic asset management and investment. And I think that's one of the things that you're calling out in your review, which is much more engagement in terms of what investment is needed.

So from a TAHE perspective, I think we would broadly agree that there needs to be change, an improvement in terms of the efficiency of a network and efficiency about investment, and how to make those decisions with more access to information. So probably we really support a much more customer-centric approach with transparency in information, and also better efficiency into the negotiation.

Absolutely support the fact that the frameworks need to remain negotiate and arbitrate. I think that reflects the commercial realities of the ongoing relationship between us and the freight operators. But with some integration from IPART when the negotiations are not efficient, so we would broadly support the need for change in most of your recommendation.

I think perhaps, issues for consideration for me is and what else can be done in the meantime? So by the time IPART issues its final report and recommendations are considered by a new government and implemented into legislation. What can we do as part of this group to improve and more efficient access to the network. I think if that's something that we could consider today or as part of your report because investment is needed on both sides, both from the regulator, but also from the access provider. How can we perhaps not waste time. And I know that the team from Transport and TAHE, Sydney Trains and NSW Trains are very keen to explore those transition measures.

I might just hand over to Adrian Kemp to provide so a bit of benchmark, what is happening in our regulatory environment to put some context around what can we do and provide better customer engagement in particular.

Mr Kemp: Thank you Benedicte. For those of you who I haven't had the pleasure of meeting. My name is Adrian Kemp. I'm an economist, regulatory economist, been working in the regulatory space for 20 plus years, like probably many of you in the rail space, and I've been working closely with TAHE to consider all of the various recommendations and options that are being put on the table and look, I would echo Benedicte's comments it's a very comprehensive review. So well done team and we particularly appreciated the focus on the detail because I think we all acknowledged and recognised the regulatory framework that was put in place in 1999. So up to what 23 years ago is clearly not fit for purpose, and is in need of change.

In terms of some perspectives on the overall form of regulation. Clearly we would recognise and agree that negotiate-arbitrate is definitely the correct form. There is a lot of detail that would need to be worked through in terms of how best to implement it.

But something. And maybe this is an area of further consideration for IPART as it considers the final report. It's really that question around well how can we properly include and a sort of customer engagement as part of the framework. There isn't as much focus on that in this particular review, and as the Tribunal members would be aware, the whole focus of reform in economic regulation across energy, and most recently the IPART's own work in terms of the water review, and the changes to the water framework has been on thinking carefully about customer centricity.

Now, of course much of that is focused on small customers in those frameworks, but I think what we've learnt and what we would recognise in the rail sector is that equally, there's a need to be much more customer-focused in terms of the provision of rail access. And I guess the key regulatory question is, well, how do we think about that in the context of rail access in NSW.

And so I would point you to 2 areas to think about or focus on, perhaps, as examples. First, it's not quite the same, but many of you would be familiar with the Hunter Valley Coal Chain Coordinator. It's a different entity, but it is singly focused on the idea of maximising throughput in the coal network. And I would just suggest that there could be some lessons from that particular framework in terms of thinking about well, how do we maximise the beneficial use of all of the rail network not just the Hunter Valley? And how can the regulatory framework help and contribute to that?

So I would encourage the IPART team to give some consideration to what works well in that framework, and perhaps what might be learnt, or what lessons might arise, and that could be thought about in terms of the regulatory framework for access more broadly. So I think that's useful.

The second we've been told the ARTC does some interesting things in terms of its access, and I'd love to hear from some of the operators in the room around, you know, what might have worked well in terms of customer engagement with the ARTC. Or indeed in other areas. But as I say, there is apparently some approaches that are used there that perhaps could be echoed or brought into what happens more broadly in the NSW framework, and I would suggest that that's another area that perhaps could be investigated in a bit more detail.

But I guess the key point is our sense was that great work. Fantastic thinking through the sort of incentive issues. But I think we need to get into the nuts and bolts of practically how are we going to improve access, and I think the centre point of that should really be around customer engagement.

Ms Coco: Thanks very much Benedicte and Adrian. That's very useful. I'll now pass over to the ARTC to make any comments or pose any questions.

Mr Teubner: Thank you. Jonathan Teubner head of Economic and Regulatory Development for ARTC. Thanks Adrian for the call out. I think from our perspective we've got a fairly unique role within NSW in that we have segments that are covered by 3 different undertakings. So we've got some segments that remain under the NSW rail access undertaking regulated by IPART, we have a voluntary undertaking for the Hunter Valley Coal Chain and then in the capital portions of the NSW network are covered by the interstate access undertaking, which is currently sort of on an ongoing review with the ACCC. And we're sort of iterating towards a finalisation on that.

I think at a broad level if we look at it from our freight perspective. So I'll put the Hunter Valley to one side. The approach we're taking from the interstate perspective to focus on commercial outcomes that I think that, you know, as a sort of economic principle that efficiency actually best comes from negotiated outcomes between sort of access seekers and owners.

But equally there is a need for dispute resolution, formal dispute resolution processes to be able to resolve where that negotiation can't work and given a commercial framework that having commercial arbitration is often the best for that.

I think, and it's called out within your paper, that there is the competitive constraint that comes in from road freight transport. So that does sort of impact on how you can reach a negotiated outcome. So economic regulatory approaches that sort of look at maximum allowable revenues and ceilings don't work in that environment.

I'd also sort of make the comment with some of the recommendations about the focus on the floor, that if the ceiling is not relevant then nor is the floor, so that sort of creates some difficulties as to how you can resolve that in an environment where there might be segments that safety requires you to spend a certain amount of money on maintaining it so that it's up to scratch. But the ability to recover all of that spending through particular lightly use freight traffic can get you into some difficulties where it's constrained by road. So there's probably some detail to work through on that.

But I think as we work through with the ACCC. If you know they recently released an issues paper in terms of the appropriate regulatory framework for the Interstate and on that they came to the conclusion that traditional regulatory mechanisms don't work in that environment and recommended more change to a more, sorry it didn't recommend, but acknowledged that there was a change towards a more commercial sort of negotiation-based outcome. We'll probably have more to say on that in the new year as we take that forward.

From a Hunter Valley point I think that the issues that were sort of raised in the document. We've got no concerns with them, and not much to say on that.

Ms Coco: Thanks very much Jonathan. I think Carmel you'd like to make some observations in response to the first 2 sets of questions.

Ms Donnelly: I will just make a few comments, so that you feel that, you know, we're having a conversation, and then I think we'll invite anyone else who wants to just make some general opening comments as well.

On your points Benedicte about short term, what can be done in the short term before legislation. I think I would just briefly really openly invite suggestions about other solutions or transitional approaches, etc. That could occur so that if people are broadly supportive of some of those sorts of changes in the rail access framework, but thinking it might take a while to bed down where we are needing legislative amendments. Then, if there's something that could help us obtain those benefits more quickly. Then we're certainly open to hearing about that.

Adrian, your point about bringing customer engagement in, I think, is a very healthy one to raise. And just for those people who I'm sure most people would not be familiar with. We have just launched a new regulatory framework for the water businesses that we regulate, which is most of the large water utilities providing water and waste water in NSW and that was after a very significant and thorough review of the regulatory framework. Just to give you a bit of a sense some of the impetus behind that was that we're in a world where the customers obviously need safe, reliable drinking water and wastewater services.

But a lot has changed with the net zero targets, impacts of climate change, resilience, the amount of investment that's needed in water businesses, and also demographic changes, and so on. That mean that we wanted to make sure that our regulatory framework didn't inadvertently encourage short-term thinking at the expense of long-term customer outcomes. And so what's encouraged there is that each utility is engaging with its customers and community long-term, with you know, quite extensive modelling and price paths and plans that are visible even when the short-term is being considered, so that it's a much more transparent way of and dealing with potential intergenerational issues and complexity.

Now we've had a lot of complexity lately. So I think it's true that the Tribunal would be very alive to the ways that that might play out in rail access. And to my mind, clarity of the bones of the regulatory framework being in the legislation, and then subordinate instruments, and then the ability for negotiate around negotiation around undertakings and then further agreements allows for the parties to have a longer-term view, and to have engaged with their customers. And then be thinking, not just in the short term, but long term, but tailored, so that is informing our thinking. And I think, you know, well worth making sure that the end customer outcomes both short and long term are covered here.

The ceiling and floor things that you've raised Jonathan, I think we're going to talk about a little more in a bit more detail, but certainly recognise that your views about, you know, negotiate-arbitrate is the best approach in terms of outcomes here, and you know that's useful feedback. I'll stop there and invite other comments.

Ms Coco: Thanks. Carmel. In particular if we've got Aurizon, Pacific National, Qube. I'm just going to run through a list of other stakeholders, please, please raise your hands. If you'd like to speak: Hunter Rail Access Taskforce, GrainCorp, Transport for NSW and Treasury. We'll walk the mic around to you.

Ms Bailey Powell: Heidi Bailey Power Pacific National. We would like to acknowledge the work that IPART has done here. We do think this is a very important part of the process of modernising the regulatory framework for NSW.

And a couple of things that we would like to call out. We are supportive of a regulatory framework that drives operational efficiency and effectiveness, and promotes investment in the right way, both in the below rail, but also the above rail, and from our perspective we need to understand and have certainty over what is coming in the future, so that we can invest and know that that will be consistent.

Noting the comments about the age of the current framework and the wholesale change that is required to modernise it. We have a strong belief that 5 years is a more appropriate timeframe for this framework, rather than the 10 years. So I'll leave that one there.

And as an operator who utilises networks all over the country. Harmonisation is crucially important to us, and I'd encourage IPART to think about that in the context of the undertakings, and whether it should be a single undertaking or multiple. We have some concerns that as the frameworks evolve over time, they will evolve differently and that will create complexity, and we are looking for a more standardised approach in NSW, but also more broadly.

Mr Coldwell: Hi there. So Frank Coldwell from Glencore Coal. I'm also the Chairman of the Hunter Rail Access Task Force which represents coal producers operating mines in the Hunter Valley which, well, there's 9 of us. I won't read out the whole list.

So our interest here is purely arises from IPART's role as the potential regulator of the Hunter Valley Network. As Jonathan has mentioned currently there is a voluntary undertaking which is policed by the ACCC. But in the event that there ceased to be such an undertaking then IPART would have the role as the regulator.

The Hunter Valley is the world's largest and best run integrated coal export chain. Glencore is the largest shipper through the Hunter Valley. So I think we can comment with a reasonable degree of expertise. Coal remains or will this year be Australia's largest export earning commodity, remains a very important commodity for our economy and for power usage worldwide.

The situation of the Hunter Valley network, I think is quite different from the freight usage of the rail network. It is a true monopoly situation. There is no road haulage alternative in the vast majority of cases. It is not in fact permitted for most mines to use the road network for coal haulage, and it wouldn't be possible practically to do it in any event.

As it's been alluded to there is a Hunter Valley Coal Chain Coordinator which ensures that the whole pit to port coal export chain is operated in a coordinated way which maximises the throughput capacity and efficiency of the whole system. That integrated approach is critical to the functioning of the coal export chain and its position as a world leading export chain.

So we are a bit different from the freight network. In particular, we have a relatively small number of end users. We're all competitors essentially in the same markets. The services we've been provided with are effectively the same. The trains are for example planned in a coordinated fashion for everyone. The trains we're using are pretty much the same, you know some small minor differences aside between the different operators and so we are using very consistent services.

As I think IPART recognising consistent pricing given that we are competitors in an end market is appropriate. We have all made substantial capital investments which are captive to the existing rail network.

Although negotiate-arbitrate may be a model that is appropriate in some contexts. The way that engagement with the regulatory process has typically worked is not really as individual access seekers. In the vast majority of cases what we are facing is a price reset process by which the pricing under existing long-term arrangements is reset through the rollover of undertakings.

So we wouldn't necessarily say that negotiate-arbitrate would be our preferred model, is certainly not with a commercial arbitration as the end point. We think that it is something that requires a much greater involvement from the regulator given that highly integrated nature of the of the coal chain and effectively the common services being provided to a group of users. So if IPART does assume its role as the fall-back regulator of the Hunter Valley we would not favour a pure negotiate-arbitrate approach being taken for those reasons.

We recognise that in previous access undertaking rollovers there has been a negotiation phase, or with always with the potential for a regulatory arbitration as a backstop. Those have always been group negotiations, and I think if IPART is minded to have a negotiate-arbitrate framework, we would certainly want the ability or the right to conduct those negotiations as a group for those people, for those producers who wanted to be a part of the group and we would not favour a commercial arbitration fallback. We would certainly envisage that it ought to be the regulator at the end of the day who would make a decision.

So look that's the comments I have on the structure. I would also like to echo the comments that have been made about the good work that IPART has done in looking at the review. I suppose the other structural element is if the ACCC undertaking is withdrawn, you've provided for a process, you've recommended a process to allow a transition which we think is appropriate.

I think the only observation we would make there is that in the draft text of the report you've mentioned the potential for a default undertaking to apply if there is no undertaking in place by the time the ACCC undertaking has ceased. We think that should be codified into the recommendation. We certainly would support that.

And we also think that there ought to be some recognition or consideration given to the processes and applicable structure of the previous undertaking, and I would call that in particular there the existing regulatory asset base, which is part of the ACCC undertaking, which was originally based on a DORC, but obviously it's been rolled over for many years under the current undertaking, and also the potential for unders and overs or other balances under the existing undertaking to be carried over into the new IPART undertaking. So that's my comments. I'm sure we'll have more to say on other sections of the discussion.

Mr Angelos: Alright, Nicholas Angelos from Qube. Like everybody else, thank you very much for the paper very thorough and comprehensive, and a good discussion point to move forward with for the industry.

Without wanting to go over other things that have been raised, a couple of points: One is that you talk about publishing of cost. We know that there's a bit of a bone of contention between Sydney Trains, TAHE and IPART about what efficient cost is. So anything to do with costs. We would like to see how that's going to play out. Given what is effectively a non-ring-fenced operation within Sydney Trains providing access and a lack of transparency, and what true efficient costs would be within the organisation.

Secondly, it was touched on by PN but the issue of track access agreements and undertakings. We currently run one access agreement on all 3 undertaking networks within the ARTC network, and it does become a bone of contention with us and ARTC, particularly trying to get through the Hunter Valley and as much as the Hunter Valley's designed to serve the coal industry, it is at times problematic trying to get seasonal traffic through the Hunter Valley and negotiating capacity through there is challenging. So having more than one undertaking and then trying to trigger dispute with one access agreement becomes questionable as to what you're actually trying to seek capacity to because your path is end to end.

Finally, I'd read like to support the idea of the group negotiations. The Rail Operators Group, I think has had a lot of success in being able to provide a unified voice. I think it's probably made it easier for TAHE and Transport for NSW to understand industry concerns a lot more coherent.

At the end of the day we all are representing our customers. We're not just people who want to run trains. We're representing the needs of our customers and putting those into a coherent voice to Transport and TAHE I think, has been very useful. Thank you.

Ms Harwood: Good morning, everybody, Susie Harwood, I'm the Executive Director Freight at Transport for NSW. Similarly and unsurprisingly, probably our comments will very much reflect those of Benedicte and TAHE. So very appreciative of the work that's gone into the report particularly from an operational perspective interested in the non-pricing commentary and we're very keen to make sure that the intent and the objectives of the commentary and also the recommendations are seen through in terms of practical implementation.

So, whatever the ultimate arrangements are that they really do drive through efficacy for access seekers and in the provision of access. We certainly agree that there is a need for improved accountability, and I think that's been touched on some of the comments already this morning and looking already at what are some of those short-term opportunities for improvement.

One of the most obvious ones is improved engagement with access seekers and that's something that we have put into motion through some of the work but there's certainly recognition across the transport cluster that improved engagement is something we can action immediately.

One of the elements that has been touched on and I think it would be really useful to hear from industry on this and again is coming up in the commentary this morning is getting that balance right between harmonisation and an outcomes approach, as well as through segmentation. And whether that's network segmentation, or task segmentation. So how do you make sure that you have arrangements in place that are appropriate for a specific task or a specific access need, that are not, I suppose, diminished as a result of striving for harmonisation. That then doesn't answer those various needs of users across the network. So that is something that we would be keen to hear more from industry in particular about.

The other thing is we're really here today to listen and to think about the input from all of the stakeholders, and how we incorporate that into our response to the draft recommendations. Thank you.

Ms Coco: Thanks very much. I'm conscious that we've also got some representatives online as well. And I just want to give them an opportunity to make some comments, and Deb, I can see your hand up. I might just ask Aurizon and GrainCorp, who, I believe, are online rather than in the room if they've got any comments to make all questions to raise.

Mr Gannaway: Sorry we haven't really coordinated between above and below rail who is going to speak on behalf of the organisation today, challenges of being a vertically integrated business. Just thank you to IPART for this process. It's very clear from the engagement and report that IPART has had regard to the issues that have been raised by stakeholders through this process.

Probably a couple of points just to raise around some of the opening remarks. To TAHE's concern about the interim steps prior to being able to implement the reforms. I think ultimately the rail access regime or regulation should be superfluous in a well-functioning customer centric arrangement.

We shouldn't be relying on the access undertaking to achieve efficient access outcomes. So it's well within TAHE's remit to implement many of the recommendations IPART has identified particularly around the information exchange, standardised terms, consumer, and customer engagement. None of those require the undertaking or regime to be put in place at this stage, so we can work around that.

I'd like to emphasise and reiterate the commentary around the engagement model. I think that's quite important. And the engagement models don't need to be similar. So as Frank's referred to already, there's different forms of engagement would be relevant to different types of networks. And because they're going to be dealing with completely different issues.

I think ultimately what we'd like to see is the regime itself embed what the expectations are around that engagement and then how the regulator is going to have regard to the quality of that engagement when it's reviewing the proposed undertakings that have been submitted.

IPART is quite rightly recognised that many of the issues that have confronted stakeholders in terms of access and use of the NSW rail network is largely institutional problems and difficulties, and the access regime itself is probably not going to be an effective vehicle in addressing or correcting many of those.

So we look forward to increased levels of coordination between TAHE and Transport for NSW, as to how they themselves can institutionally overcome some of the challenges that the industry have faced.

Lastly, around the access undertakings. Yeah, harmonisation is an objective, but that harmonisation shouldn't come with the expectation that undertakings won't be fit-for-purpose for the networks and the customers and the users that are operating on them.

So in that regard we welcome IPART's view that there should be a degree of standardisation of parts or elements of the regulatory framework across undertakings. But ultimately many of the issues that are relevant to the Hunter Valley undertaking will be very different from the remainder of the network and even to Sydney network. So I look forward to the rest of the session, but that that's effectively my opening comments at this stage. Thank you.

Ms Coco: And thanks very much Dean. Deb, I can see that you've got your hand up. Would you like to say something now, or yes?

Ms Cope: I have some questions. But if there's any of the other organisations that would like to speak first with general comments, I'm happy to wait till after that.

Ms Coco: Can I just check with GrainCorp who I believe are also online? If you've got any comments or questions for us before I pass back to Deb. No, thank you. All yours Deb.

Ms Cope: Okay. Thank you very much for the comments around being able to get good customer engagement because yes, I agree it's absolutely critical to this. My question is about and they're probably a bunch of people that could respond to this, how to get that to work in practice, because we've got in in the draft at the moment the proposal for a consultation strategy where we envisaged a lot of this would be worked out.

But for me from what I've heard, it's actually bigger than a question between individual operator and their negotiation of access on the network. A lot of the issues that have been raised go to things like train paths across networks, the ability to get rolling stock approved, the ability to be able, you know, getting coordination of when maintenance is done across different network, so that you can get good systems. So how do we get that to work properly and what's the role of the undertaking in that?

Ms Coco: That's great. Thank you very much Deb. We might look to move on to the next session. But can I just check before we do, whether we have any more comments or questions online or in the room or indeed, responding to Deb's question.

Ms Cope: Adrian, did you have a response to that given that you are the one that originally raised it?

Mr Teubner: Thanks, Adrian, Sorry so Jonathan Teubner from ARTC. I think Deb's questions are questions that have come up enormously, sort of through industry reviews around productivity and what are the constraints on freight becoming more productive on rail.

I think at a high-level things like harmonisations across networks are, I think, matters that can't be managed through an economic undertaking, that is, infrastructure managers position that ultimately and rolling stock standards was raised. Rolling stock standards is a safety matter in terms of the review of that rolling stock as to whether it's fit for purpose on that network.

The network manager carries liability and indemnity provisions within the contracts, as does the operator in terms of how that works on their networks, and having that, as a matter of economic regulation, I think, is challenging.

It doesn't move away from the need for there to be more harmonised approaches to how you can deal with better network connections and operations, and how that works. But I think that's a step too far to sort of put it within an economic undertaking. It more becomes one sort of around operational and safety commitments, and how networks work together.

Ms Harwood: Thanks Jonathan. I think I can probably add to that from a Transport for NSW perspective. So I'd agree that a number of those issues outside of the economic regulatory piece, but I think they sit alongside it.

So in terms of the responsibilities of Transport for NSW, as well as of rail infrastructure managers. There are mechanisms, and I think we can look at how we collate those in terms of the responsibility of Transport for NSW. So, at least there's coordination across the various obligations. And that's definitely something that we need to give consideration to as well as the notions of harmonisation or interoperability more broadly. Again, beyond the economic regulatory piece.

It's certainly something that is front of mind for us, and in our engagement with industry is routinely raised, so some of the measures that we would like to explore further. I can understand how these things sit alongside each other effectively, how we execute our policy functions more effectively.

So we've developed a freight level of service and there are requirements, specifications that flow from that, and that should help drive through some of those accountabilities across transport and the other operating entities. I think we need to be looking at this piece of work as part of something which has a broader context, but a shared intent and objective across that context.

The other comment that I would make is that the engagement should be structured, and it should be premised on strong governance, so that it's meaningful, and we understand what the decision-making points are, and what the role of access seekers is in that governance, so that it's, as I say, is very much a purposeful engagement, and we know what the roles of all of the parties are, and it should be distinguished I guess from a relationship management exercise is important as that is.

Mr Kemp: I think Jonathan and Susie said all of the things I was going to say actually. So I guess the point, Deb. I was going to highlight was that I think in this sector there's a need to be very clear, or have a clear delineation between policy issues versus the regulated service. And so when we think about the consultation and engagement. There's probably 2 different processes there, and Susie's touching on that in her commentary.

Clearly, there's no role for access providers to be involved in that policy debate, in the access provider is ultimately and wanting to implement the policy framework that is put in place. And that's clear when you think about safety or other elements. But clearly operators need to understand that and have some opportunity to engage on those policy issues.

But then we do need to think carefully about well what is the governance arrangement around engagement on the delivery of the service that is being purchased under an access agreement. And so I think there's a distinction that needs to be drawn between how we think about customer engagement and the processes around that between those 2 elements.

Ms Collins: And if, Benedicte from TAHE, if I can add on the customer engagement, I think one point that you're raising in your report is better engagement in relation to investment. That forum hasn't happened so far, and I think it's important to recognise that we need to create some governance framework perhaps similar to other regulatory environment. In particular, in the energy sector, where you have a consumer group and sort of a mandatory consultation because the rail operators will want to invest in rolling stock. We will want to invest in better tracks or sustainability. How do we make sure that we've got efficient investment that actually addresses the ultimate customer needs. So back to your point Adrian what's the governance for creating that engagement.

Ms Coco: I might just take a question online first before we take another one from the room if that's alright. Mariese, I can see you've got your hand up. Sorry, Mariese your sounds not coming through unfortunately. No sorry.

Ms Murphy: Sorry. Can you hear me now?

Ms Coco: Yes, thank you.

Ms Murphy: Okay. Sorry about that. Mariese Murphy from Aurizon. You do touch on it in your recommendation for one of the engagement with the single point of contact, and I think as a process that would be a really good idea.

Ms Coco: Thanks very much, Mariese

Mr Grove: David Grove, Pacific National. I would also like to thank IPART for their work and the comments given so far. In answer to the question how do we address differences between safety, economics, and reliability, all the rest of it. I think if we have a principles-based access undertaking, and as Heidi mentioned earlier the kind of things that Pacific National sees as important as these principles are well expressed within 44A of the CCA, which are the objects of Part IIIA access under the Competition Consumer Act.

So to promote economically efficient operation, use of an investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

And to provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry so as we approach each question, how do we arbitrage between one decision or the other. We examine the decision against: does it promote efficient operation; does it promote investment in above rail or below rail?

It's worth saying that rail freight is currently experiencing a down shift in confidence across the nation, not just in NSW, but across the nation and road freight is gaining an increase in customers minds as a more reliable way of operating.

Having said that though, those in the room here that operate rail would understand that the economic and environmental benefits of rail freight far exceed road freight, and we need to work towards increasing the amount of rail freight because as we said in the in the outset freight task, the freight task will increase and is increasing, and the only way to support it is by rail freight. Given that the roads in all states are currently very constricted. Thank you.

Ms Coco: Thanks very much. I'm looking around. I can't see any more hands raised. Oh, I can see hands raised apologies, Nicholas.

Mr Angelos: Nicholas Angelos from Qube again. Just a quick point that we talk about investment in the network. Many of the government decisions are an economic outcome. They do not accrue benefits to us, they are actually benefits that occur to our owners or our freight owners whereas in the Hunter Valley effectively it does accrue to the freight owner and the complexities of those investment decisions, and the capacity that comes with them, whether they be for freight benefit, or passenger benefit, I think is the complexity that we need to explore. So thinking not necessarily about network investment, but capacity enhancement, and capacity protection is probably a better mechanism than necessarily thinking of dollars in the ground.

Ms Coco: Thanks very much. If there are no more questions or comments in relation to session 1 we will move ahead. Thank you very much for all of the contributions on session 1. I'll pass over to Carmel now.

Ms Donnelly: I won't talk for too long because this has been very helpful, very helpful to hear from everyone and for everyone to hear from each other. And so I want to make sure that we've got as much of that as possible. I think we're going to now move on to the next presentation. We'll share a little bit of that presentation from IPART and then get into some more questions and discussion.

Session 2 – Roles and responsibilities

1.5 IPART presentation

Mr Tsirikas: Thanks Carmel. So we'll talk about roles and responsibilities now and just given time, I might try and keep my notes a little shorter than originally intended. So for us there's really 3 key issues we want to talk about in this session.

The first is about a single point of accountability because we heard consistently throughout our engagement that this is an important issue for a lot of stakeholders meaning that they deal with TAHE in terms of negotiating the contractual arrangements, and to some extent really Transport for NSW as TAHEs agents, and then on a day-to-day basis they deal with other agencies throughout Transport, and this creates difficulties for them.

So we thought it's important to have a single point of entity throughout the regime. We're not proposing to change that and the way this will work in practice is, you would have the obligations that place all access providers and access seekers in the legislation, so as listed in the slide there and then the single entity, the access provider would put forward their undertaking.

So the way we saw this undertaking working in practice was it will set out the terms and conditions for the access providers networks, and this will allow them to tailor to their business providing flexibility.

Flexibility was important to us as the NSW rail access framework applies to very different networks and very different providers. We have 2 in the room right now, ARTC and TAHE, their networks aren't really quite the same. And we're also conscious that the Hunter Valley could come back into the framework as well, so it needs to be flexible. It needs to cater for a diverse range of situations.

At the same time we want to ensure that the framework provides some minimum standards and that's what the legislative and regulations come into play. They ensure that there is a set standard for the undertaking that IPART will assess against, and there is also the option for IPART to issue a default undertaking.

So this brings me to the second key issue we want to discuss which was the role of IPART. So we have proposed broadening our role and make of that as you will given its our review, but it's important that there is oversight, and this can be achieved by access providers providing the undertaking to IPART for assessment against these legislation and regulated requirements.

We would be responsible for determining if an undertaking has met the pricing and non-pricing principles such as setting out the access provider's capacity allocation rules. And as I mentioned before, IPART does have the option of a default undertaking, should the proposed undertaking not meet the minimum standards.

And this role is not just similar to those in other regimes including ones that we already regulate such as the Water Industry Competition Act 2006, where we can approve an access undertaking and another regime such as the Queensland regime and the National Regime, is the Queensland Competition Authority and the ACCC that approve undertakings as well. So this is not a new concept. It's done elsewhere.

And then just quickly. There's also the importance of compliance and enforcement. So we propose expanding our powers to ensure that we can investigate non-compliance, and then, if necessary, take compliance enforcement action, and we would apply these powers consistently with our Compliance and Enforcement policy.

And the last but not least, we would also maintain our existing roles. So issuing a WACC and that's one on the technical side that we will talk about later. So that's it from me.

1.6 Questions and discussion

Ms Coco: Thank you very much, Matthew. So again, if you would like to make some observations or comments, or ask a question. Please raise your hand either physically or virtually. Benedicte, thank you.

Ms Colins: Thank you, so obviously the issue of accountability and compliance is something that we are very mindful of and again, as I said in my opening statement acknowledged that there needs to be probably better transparency and efficiency in how we provide access.

We've had a number of discussions between us and my colleagues from Transport for NSW and Sydney Trains and NSW. I think we would broadly agree and understand the perspective of the rail group operators. There needs to be a signal point of accountability, and if we support a model where it is negotiate and arbitrate then there are 2 parties probably the operators and the access provider and that, having one point of accountability from a regulatory perspective would make sense.

We also make the distinctions between accountability from a regulatory and compliance perspective versus having one entity undertaking over functions which is not the model at the moment. So we really need to, and we acknowledge we need to do that work between TAHE, Transport for NSW, Sydney Trains internally around devising what would be the model that would support a single point of accountability. And that's a piece of work that needs to be undertaken. But I think broadly we would support a single point of accountability from a regulatory perspective.

The other point that I'll make before I hand over to Susie is accountable for what. So also being very clear on the KPIs, a compliance piece of work, and the transparency of information so that we can be held accountable. So that piece of work also needs to be undertaken. Susie, I'll hand over to you.

Ms Harwood: Thanks, Benedicte. Yeah, similar views in terms of the need, and we very much heard from access seekers of that need for a single point of accountability. As Benedicte has touched on there is certainly internal complexity around their functions and the discharge of those accountabilities by the various entities across the transport cluster.

But we do want to sort of work in earnest to find a way to make it easier from a customer experience perspective when it comes to not only negotiating the agreements but the actual implementation of the terms of those agreements, and it was touched on earlier that in the day-to-day running of the network hopefully we don't need to be referring back to the terms of the access agreement, but that there are clear, I guess, channels of communication into transport and the various operating entities that make that work effectively in practice, and that is something that we need to really spend quite some time working through.

The other piece that again would be really useful to hear from industry on is the importance of having visibility of and direct access to decision makers. So again, balancing up that benefit of having a single point of accountability from a customer perspective, while also being able to contact immediately and efficiently decision makers for various functions.

And I don't think one needs to necessarily be at the cost of the other. But I suspect that there's benefit in having maybe multiple points of meaningful contact, but also having a predictable pathway. If there is an issue that needs to be raised or escalated.

Ms Coco: Thanks Susie. Any questions online?

Ms Donnelly: Just while we're seeing if there's any other comments or questions on this, I do want to thank you for those comments, and really just share a little of particularly my thinking in this regard. Throughout the review it has become quite clear that there is some downsides for the access seekers if we weren't to have one clear single point of contact and accountability.

But it doesn't seem to me that that would necessarily assume any particular kind of operating model or structure in the transport space. In fact, as I said at the beginning, a test for us is would it be an arrangement that we're putting in place in terms of the economic regulation that is robust to changes into the future.

And so one way of conceiving of this is that it moves the some of the burden of coordination from the access seeker to accountability arrangements behind the scenes between those responsible for different roles within transport, and then that enables the accountability to flow through behind the scenes.

So I do want to say that there is also a question over this is can we do this in a way that gives better outcomes, more coordination, reduces some of the regulatory burden in effect on the access seekers and is robust to a range of future scenarios that might occur. So it seems we've got more comments, we've got a couple coming here and we'll go to Benedicte and then Nicholas yeah.

Ms Colins: Thanks Carmel. Just in response to your comment. I think the way we operate in an area or has been have been operating for a year now between us, TAHE, and Transport kind of address I think the model that you're suggesting where TAHE as an investment provider, an asset owner can provide, and also being a state-owned corporation, can provide that sort of independence in terms of the assurance.

Obviously, with a team of 50 people we are not undertaking the functions, and we are not suggesting that we should. Nor should we do the work of the infrastructure manager. But I think some of the model that we have been thinking of is without disrupting the model. How can we have one entity which is from a regulatory perspective the single point of accountability.

Mr Angelos: Nicholas Angelos, Qube. Going back to your point, it's great to have a single point of responsibility or accountability within the structure. Just 2 things from an operator's perspective, one where inherently fall back on the issue of conflicting legislative obligations.

So TAHE holds a responsibility to facilitate and promote access. Sydney Trains as primary objective as set out in legislation is safe and reliable passenger services, and we see no way of how Sydney Trains as responsibility is undermined or balanced against the accountability of TAHE to promote and facilitate access.

And there are a number of other conflicting legislative arrangements. So from a regulatory perspective, who is responsible for providing that access. And then you have again, you have, I think, it's 99D from memory which is the network control function that resides with Sydney Trains. But somewhere in the mix there, the timetable, which is actually the capacity that we're buying, sits with Transport for NSW. So that lack of clear oversight, I think, is the crux of our angst.

And going behind that what is the transparency. There is supposed to be an agency arrangement between TAHE and Transport and Sydney Trains and the like, but we have no visibility of that. So we don't know what our rights are and what has been passed on to another agency by TAHE.

Ms Coco: Thanks very much, Nicholas. Fiona I can see you've had your hand up for a short while. Thanks for waiting. Would you like to ask your question or make your comments?

Ms Emery: Sorry, can you hear me now, hello?

Ms Coco: Yes, we can hear you.

Ms Emery: Sorry I'm having IT Issues. Look this is a great conversation. I really endorse what Carmel said about the need for the coordination. Whatever coordination needs to be done in terms of the management model that's put in place. That coordination should be done by the access provider and not the access seeker. We've got one contract. We've got an access agreement and our access agreement is with that party.

Now, at the moment that access agreement sits with TAHE, but the services are provided by a range of different other entities and we don't have clear contractual rights in relation to those other entities. And as Nicholas has just pointed out there's also a range of conflicting legislative obligations. And we are, you know, put in a place of having to deal with potential competitors putting together or allocating capacity for us on the network.

So I definitely think a huge improvement could be made by putting in place a single point of regulatory and contractual accountability, you know, if the access provider wants to put in place its own asset management model and contract other parties to provide that, well that's up to it, but access seekers shouldn't be responsible for having to enforce those obligations.

Ms Coco: Thanks very much Fiona for those really useful comments. We'll move on to Sandra next, please.

Ms Gamble: Okay thank you. I just wanted to for everyone else has been talking about it and ask Susie and Transport for NSW, when you're putting your submission to us, or even in this forum. If you can explain to us how the model works that you're talking about.

The idea of having you know better communication channels. Better access to decision makers sounds like a really constructive improvement. But how would that work legally, you know, from the framework that we've designed? IPART needs to hold someone accountable for the provision of information, to hold them accountable for the way they negotiate and then potentially, even to arbitration. You know, how would that work from a compliance point of view. Who would be the entity that we would not only just hold accountable but potentially even enforce compliance. So, you're welcome to make a comment on that now, or in your submission. But we'd be very keen to understand how that could work. Susie, do you have any response to that?

Ms Harwood: Yeah, happy to make a quick comment now, and I think we would agree that we need to work through sort of how that might work and to Benedicte's earlier comment accountable for what, and so then, what is the mechanism for compliance and needing to be very clear around what we're discussing.

And I guess there are a number of items that are touched on in the commentary in the report, and when you're looking at accountabilities, and Nick has touched on this there are accountabilities that reside in the legislation that won't necessarily be housed in the access agreement.

And I think a number of the things that are touched upon in the commentary in the report, go to those types of issues. So, Carmel the description that you gave around trying to relieve the regulatory burden from industry makes sense, and I think that's something that we need to work through.

But to my sort of opening comments about this sitting alongside a range of other activities that Transport is responsible for or agencies within the transport cluster responsible for. I think we need to as Transport and working with all of those parties understand what's the broader need. And then how do we put arrangements in place that are effective across the breadth of that need.

So it may be that legislative accountability, for instance, would still sit with Sydney Trains in a certain capacity. But there could be coordination, if not accountability that resides with Transport for NSW, and then potentially contractual mechanisms that more officially or formally drive home some of those formal accountabilities to Transport for NSW.

But I suspect it will be a mix of functions from a legal perspective that need to be understood and it may be that you would still have that single point of contact, and I don't want to get into the semantics right now. It could be a little bit different to a single point of accountability.

Ms Coco: Thanks, Susie. Sandra, I can see your hand up again. Yep, back to Sandra.

Ms Gamble: So when Transport for NSW put that submission to us. We'd be really interested to know if it's not one point of accountability, if it's a number for different teams how that could be in the best interests of the consumers. What the benefit would be in doing that? So that we can be really clear about, you know, because it potentially creates some complexity, and maybe some friction in the process. So what would be the benefit in doing that? We'd be really interested to know

Ms Coco: Thank you. I think Dean's hand might have gone up just slightly before yours. Apologies we'll pass to Dean, and then come back to the room if that's alright.

Mr Gannaway: Thank you. I guess our expectation and understanding of regulated businesses and regulatory framework is that ultimately given that the regulatory framework itself is a legislative instrument that a party under that legislation. You can only realistically have one party accountable for the responsibilities under that legislation.

So it's not as though we don't have examples of where different elements of a service are being provided by a different legal entity. So the DB, the Darwin Bay terminal is a good example where the terminal is actually operated by a separate legal entity.

But the party who provides the undertaking is still fully legally accountable for all elements of negotiating and providing access under that undertaking that is provided by that entity. So to Fiona's point at how the access provider seeks to actually back end and coordinate and contract all of those supporting functions and other things that are required for that party to be able to comply and give effect to that undertaking, is ultimately the responsibility of the access provider and shouldn't come, we shouldn't be in circumstances where we raise transaction costs and institutional frictions by introducing unnecessary interfaces for access seekers.

Ms Coco: Thanks Dean, over to you, David.

Mr Grove: Yes, David Grove, Pacific National. So far we've spoken about TAHE being the accountable party. But let's not forget that ARTC leases portions of the TAHE network. So here's a question for the group. I guess our thinking is leaning towards ARTC being the responsible party for the sections of the network that they lease simply because ARTC it makes sense from an efficiency perspective, simply because ARTC have their own network over much of Australia, and it doesn't make a lot of sense to have a carved-out section that follows a narrow model. So I'd welcome any comments on that idea. Maybe Jonathan might like to comment.

Ms Coco: I think he would. Thanks.

Mr Teubner: Thanks, Frank, and thanks David. All I could just say is I was under no impression that the single port of entity expanded to our networks and put them under TAHE. So we're very happy to continue on with the undertakings that we've got for the networks which we operate.

Equally we would be very less keen on taking on any single point of contact for networks that we're not involved in, but it wasn't our thought or interpretation of the document that that single point of contact for us would transfer over to TAHE. That's more around their assets.

Ms Coco: That's great. Thanks very much, Jonathan. I'm looking around I can't see any more hands raised, certainly not online, and certainly not in the room. So I think we might bring session 2 a close.

I just want to thank everyone again for your contributions, your comments, your observations, your questions so far. We appreciate you coming to this, prepared to contribute and discuss and I can give you our assurance that we will carefully consider all of your contributions, and your comments and your feedback when we are making our determination, our decision, and it's really useful for us again to hear your views.

I'm going to take us to a short break now, and I think, how're we going for time, if I can bring us back into the room at 11:40am please, and we'll make a prompt start at that point in time. Thank you.

[Short Break]

Session 3 – Non-price provisions

1.7 IPART presentation

Ms Coco: Thank you everybody for re-joining us. Okay, we might make a start to ensure that we can cover off on the remaining sessions, and have enough time for some robust discussion and exchange of views in time, thank you very much for returning welcome back. We'll now hear about non-price provisions aspects of the regulatory framework. And I'm going to hand it over to Melanie.

Ms Mitchell: Thank you Michelle. Just one point of clarification from the earlier session before I start this one. When we're talking about a single point of accountability, we do mean per network. So what we're talking about is where you have a separate rail owner from the rail infrastructure manager, that you've got a single point of accountability for access seekers. So I just wanted to make that clarification before we start this session.

These next couple of sessions sort of delve more into the detail of the pricing and non-pricing provisions. So the second session will be about all things related to pricing and this one is about the non-price terms and conditions.

So in contrast to the pricing provisions, we found that the current framework provides little guidance and transparency about how access providers make important decisions on non-price terms and conditions and this was a substantial area of concern for many access seekers, particularly around how capacity is allocated and managed, and also how new rolling stock is approved for use on the network. So stakeholders were very clear about this increasing their costs and risks, and actively deterring them from using rail and investing in new rail sidings, terminals, and rolling stock.

So in our draft report, we've proposed a set of high-level non-price obligations that should apply to all access providers and these include:

- that access providers should allocate capacity according to rules that meet efficiency and competitive neutrality tests
- they may revoke or curtail access rights if access seekers consistently fail to use contracted paths
- they should only grant new long-term exclusive access rights where there is a compelling case based on efficiency or avoidance of wealth transfer
- that the access provider consults adjoining network rail infrastructure owners and access holders in developing a network maintenance plan with the objective of minimising disruption and maximising available capacity for existing access holders.
- so we've recommended that access rights should be transferable at the election of the access holder or end-use customer, subject to meeting objective standards
- where access seekers request investment in expanded capacity, the access provider should proceed if it can recover the costs from access seekers

- the access providers should not refuse permission to operate trains to any qualified operator that meets objective standards, for example, for safety, rolling stock suitability, creditworthiness, and insurance cover
- and lastly, that the access provider should establish service-level KPIs to measure performance and establish consequences for not meeting those KPIs in its access agreements. So this is to ensure that the access provider provides train paths and infrastructure that are fit for purpose, and that access holders ensure that each train movement is fit for purpose as well.

And so these provisions are generally consistent with those that are employed in adjoining rail access regimes, and we've recommended that access providers would need to develop transparent and enforceable rules, detailing how they would fulfill these obligations based on their network characteristics and commercial needs.

However, these rules should be assessed independently against efficiency and competitive neutrality principles before they come into force. Importantly, including these rules in the regulatory and contractual framework forces the access provided to be transparent about their decision making, and means that they can be held accountable by third-party access seekers.

It would reduce the costs and risks to access seekers and give them more confidence to make investment decisions in rail operations. So we're interested in your feedback today on whether these provisions:

- would improve access seekers' abilities to make decisions about access?
- would have the potential to open up additional capacity, perhaps by improving the use of existing capacity?
- lastly, whether there are any limitations to access providers or access seekers' abilities to meet these requirements?

1.8 Questions and discussion

Ms Coco: Thanks very much Melanie for that really useful summary. So again we will open up the floor to questions and comments. So please do raise your hand either physically or virtually. If there is anything that you would like to say or ask. I'm going to look at you, Philip because I - did you want to share an example?

Mr Laird: I'll wait till the major players have finished.

Ms Coco: Yeah, no problem. Thanks, Philip. That's okay. Nicholas thanks.

Mr Angelos: Thank you. This is probably an area of which we could go on for hours on it I suppose the non-price terms but just 2 comments on some of the points that you've proposed.

One is the alignment of KPIs between networks. So as we run across the networks today ARTC measures on time within 15-minutes as we leave their network. Sydney Train says you've got to be on time and on time is zero. So a measurement of 15 minutes means nothing effectively in the eyes of the neighbouring network. So how there is alignment or meaningful measures of KPIs across the networks. And second tied in with that to a lot of our performance on the network as an operator, and how we use our capacity is driven by the adjoining networks.

The second point is how do we drive a whole of network outcome because, as I said before, we don't just operate on one network. Can this be a mechanism to place an obligation on the network owner to get a whole of NSW outcome? If we build an undertaking that effectively treats the network as an island, we'll end up with the same problem that we have today is a whole series of non-aligned network outcomes, which just deliver a loss of economic potential rather than a growth in economic outcomes.

Ms Coco: Thanks very much Nicholas. Is there anyone online who would like to make some comments or ask a question. Deb, I can see that your hand has gone up.

Ms Cope: I had a question, and it's around the discussion in the report about the ability to revoke or curtail unused train paths. And so my question is two-fold, one how important is that to the effective operation of the network? And the second one is, is there an issue, or can you accommodate within that sort of framework the ability to address freight that's perhaps uncertain in its volume and timing?

Mr Angelos: I'm going to jump in by virtue of having the mic. I was actually going to make a comment on the same provision, and we would like to see that the resumption of that excess capacity would only occur where there is an alternate use.

It should not simply be the case that if an access holder holds capacity, that it's not being used under a take or pay arrangement that it should be resumed, unless there is no alternative use for it. Otherwise the result is simply to place the burden of paying for that capacity on the remaining users of the network and undermines the economic efficiency which we believe is generated by having long-term access arrangements.

We have no, the other principles that are put forward, I think are sensible. I would also comment, though that a lot of the capacity certainly in the Hunter Valley is already allocated. So I'm assuming what is being talked about here is the initial allocation of capacity between access holders. A lot of the capacity is already allocated in that way, and there's a well-established process for allocating additional capacity.

There is, of course, the sort of day-to-day allocation of capacity in terms of who gets to run trains through the network. I think that's a different sort of an exercise. But again, we already have an existing set of principles that govern that allocation.

Ms Cope: Thank you.

Ms Bailey Powell: Thank you. Heidi Bailey Powell from Pacific National. I think that when we are looking at the hand back of paths we need to be cognisant of seasonal services, and that those services may not be running at their expected capacity at all times during the year, or even many years. We would like to have a short-term capacity transfer process considered to facilitate pathing being moved between end-users or operators, so that it is being utilised, and make sure that that's able to be done efficiently.

So that where we are, for example, in a seasonal traffic we have a seasonal traffic that is not running we can go and effectively use those paths for something else, and ensure that the system is operating as well as it can be.

Ms Coco: Thanks Heidi, Fiona Emery. I can see you've got your hand up online.

Ms Emery: Thanks, Michelle. I was just going say that I think we see value in having a resumption clause and taking into account what Frank and Heidi have said, I think the primary value is where an end-customer decides to go out to tender and wants to change its operator, there needs to be the ability for that capacity that's required for that task to be smoothly transitioned to the different operator.

Ms Cope: I think that's what we've called the tap on the shoulder provision in the discussion in the report. Did you feel that was anything in that analysis of that in the report that didn't meet the needs that you think need to be met?

Ms Emery: No, Deb, no.

Ms Cope: Thanks.

Ms Coco: Thanks both Nicholas.

Mr Angelos: I largely agree that it is somewhat commodity-specific because each of the markets that we operate in have different drivers. There are some things which are more seasonal than others. There are others which we carry the seasonal peaks and troughs effectively in the length of the train, as opposed to running additional services.

There are also without getting into the world of pricing, here are some pricing drivers that send signals to the industry. There's an example I think we put in our submission. We run one train, which runs alternate days. It runs on a 48-hour cycle. Given the current nature of a timetable which is spread over a 7-day week, that means we effectively over a fortnight, would need a train every day in the timetable, which is not justifiable from a cost perspective.

So, understanding what each of the markets needs are, and maybe through the negotiation-arbitration model come to an outcome which delivers an outcome for our end-customers and giving them the surety of getting capacity.

The other unknown in to a question is to with capacity, is how passenger is treated, and what is reasonable passenger capacity as opposed to the model today where Sydney Trains and Transport write a timetable and say here are the gaps that are left. Good luck freight go for it.

Ms Coco: Thanks Nicholas. Benedicte.

Ms Colins: So I won't comment on the issue of Sydney Trains in the capacity allocation and the conflict between passenger and trade, but perhaps more from an asset owner perspective, and also with Transport as our agent. I think we really recognise KPIs that drive better performance and efficiency of a network are needed.

This is an areas which we recognise as an important issue and we are working on it, and I think, from the message from us as both TAHE and Transport if I may Susie before I hand over to you is that we are very much here to listen. What sort of KPIs from the industry would drive better performance than just in the comments that I've just heard in the last 5 to 10 minutes is recognising that there needs to be flexibility, so it's not one suit of KPIs fits all that really are here to listen. The sort of KPIs, you think would drive better performance.

Ms Coco: Thanks, Benedicte. Philip. Thank you.

Mr Laird: Thank you very much for the invitation to appear for a few minutes. My concern is what happens when rail access to a rail freight operator for a particular freight task that could be supplied is denied by Sydney Trains. This then, leads to a situation where the freight goes by road. In short more loads on roads.

As for many a freight task, rail will use one-third of the diesel that the trucks will use, and so will produce one-third of the carbon dioxide emissions. And here we are, e've got legislation now saying we have to reduce emissions. So I think that is material. More loads on roads leads to high costs to our society as a whole. As considered 10 years ago by IPART in its 2012 review of access for grain to the rail network. That you can argue about the level of these charges, but they are positive they not zero, and they should not be swept aside.

The first one is unrecovered road system costs. Based on a New Zealand user pay road user charge on a kilometre basis per truck type. B-doubles and 6-axle articulated trucks in Australia on average enjoy a 1 cent per net tonne kilometre subsidy. So if you're moving a 25-tonne container 160km from Sydney to Newcastle there is a \$40 in effect hidden subsidy. The net road crash risk has been worked out before at about 0.6 cents per net tonne kilometre so there's \$24 of road crash risk, and there are other external costs as well.

The situation of Sydney Trains withholding a freight path is not hypothetical. It's occurring right now where Manildra, who move 14 freight trains each return. I think say 7 down 7 back. I don't know each week, mostly for Manildra out west to Bomaderry to their ethanol plant, have put in an application to the Department of Planning to use A-double trucks and B-double trucks just to run ethanol for export from Bomaderry to Port Kembla. That's on the public record and Manildra are placed on the public record clarification saying that Sydney Trains is adamant that we cannot have another freight path. Give us a break.

I mean you can always find another freight path, you know. It needs goodwill on both parties to, you know all right, there might not be your preferred time, but surely this one we can do that. No less than the former Opposition Transport Secretary in London said that in Sydney 12 years ago you can always find another freight path.

So its agreed rail access pricing is very important, but then so is the question of getting the rail access in the first place, and please we need to factor in emissions. It's legislated now, material, please. External costs are not zero, and the IPART ones of 2012 are a starting point. There are other estimates as well out there.

And finally the point we need to make our rail freight more productive. We've had 30 years of making road freight more productive, 30 years - heavier trucks, longer trucks, B-doubles aren't big enough. We'll have A-doubles, and to Port Botany, or now we want them on down the Princes Highway on the Pacific, on the Kiama bends. Give us a break.

We need to improve rail freight productivity and speed weight characteristics. 25 years ago Transport Ministers, State and Federal and Territory sat down and agreed that we needed to make the rail network improve its KPIs. The speed weight performance. They had a 5-year short-term gain and a long-term gain. Not even the short-term gain has been achieved on our interstate network.

We really need to do better as a nation and as a State. So thank you very much for the chance to share these views, and I hope they have some help to the Tribunal.

Ms Donnelly: Thank you, Philip. I might just make a few comments in response. And you've raised a number of issues there, and I assure you we take everything into consideration. I do want to say that I think one of the strengths of IPART's model is that we come to this not as a single focus regulator but with a broader awareness.

I can assure you that the Tribunal considers climate change. In fact, we published a statement and framework on how we consider climate change in all of our work last year, and I know that my fellow Tribunal Members who are online, who, you know, have their own voice and their own independent thoughts on this. But I can very confidently say that we are as one in terms of considering the importance of climate change

So my opening remarks about the importance of there being good decisions for the mode of transport, the costs in terms of both the road congestion, but also to the environment. We're really going to that point.

The other thing that I will share with you, which I think also highlights the way that we will consider the bigger picture. I was here yesterday with another group of stakeholders in the room next door, and that was with people from local government.

And we're also reviewing the way that we regulate the setting of the maximum amount that rates can be increased across NSW, and we've been having workshops and meetings on that. And one of the significant concerns for the financial sustainability and viability of local government, and I know that they're not responsible for all of the road network, but across NSW a considerable amount, are the challenges in an environment with more frequent intense natural disasters and weather events as a consequence of climate change and the enormous task of road maintenance and the costs for that. So we're mindful in our thinking about wanting to have the incentives right for good outcomes, considering many different perspectives and community needs.

We're mindful that if there were shifts from rail to road then there are other people who we would need to consider. Do rates need to go up or do other costs need to go up in order to enable maintenance of those roads. So we will look at things within the bigger picture context. And so I can assure you of that.

I would just before I sort of, you know, back to everybody else, so that we can listen to more views. I would very much invite everyone who puts in a submission to consider what you might be able to suggest in terms of KPIs and performance.

And I know that there's been some elements of flexibility that are highlighted here, but also that it is in fact part of the framework of alignment and harmonisation as well. But what is important to you from your perspective in this review what kind of KPIs would be critical from your perspective is something that we'd be very interested in. So I will hand back to Michelle, so she can keep us moving with other people having input. But I wanted to thank you for that that point and speak to some of the context.

Ms Coco: Thanks, Carmel. Fiona Emery, I can see you have your hand up online.

Ms Emery: Thank you again. My comment was just taking it a step back to looking at the KPI issue and I did notice that one of the recommendations of discussion was about alignment of KPIs and one of the requirements was also about the need for the access provider to engage with adjacent network owners in relation to maintenance.

I think that it's very important that improved engagement occurs between the networks. As Nicholas has pointed out, we need to get used to focusing on a path provision as opposed to just what's within the individual networks.

I think it would be of advantage if there was a similar sort of obligation in the regime on network owners to engage and consult not just in relation to the maintenance, but also the allocation of capacity to consider where there are, you know, paths that cross over multiple networks that there is engagement done there.

And in terms of putting KPIs in place. I think that would be a useful KPI to include in any sort of regime that would consider the sort of engagement that had been done, the number of paths that had been scheduled across networks and the success in terms of performance of those paths.

Ms Coco: Thanks very much, Fiona. Sarah, Susan, my apologies.

Ms Furze: Thank you. Susan Furze from Pacific National. Just before I touch on the KPI issue. I just wanted to thank Philip obviously for his comments. Road crashes kill around a thousand people annually. In Australia about 40,000 nationally are injured and cost the Australian economy around \$30 billion. So at the risk of sounding melodramatic, if freight can't do its bit, you know we are condemning people to you know serious crashes, injuries and potentially death. But, so I think those were really important points Philip. Thank you for that.

Just on the KPI issue, I think Benedicte, you pointed out the need for flexibility. But then we've also heard about that need for alignment and harmonisation, and noting that we also have ARTC operating on the network.

A potential starting point could be where can there be some alignment across, with KPIs with ARTC as well. But I think Pacific National we'll definitely look forward to being able to call out some of the key needs around that in our submissions. So I thank you for the opportunity. Heidi, Dave, anything more, thanks.

Ms Coco: Thanks Susan. Any other comments, questions, Frank.

Mr Coldwell: So comment on our KPIs. I think it's easy to get hung up on developing a set of KPIs, but it's not necessarily going to drive the right performance that you want. It's very hard to be able to specify exactly what it is that you want to incentivise from time to time may well change, and setting a set of KPIs in isolation. It can be problematic if it ends up driving the wrong behaviour.

And also, you've got to, you can't look at KPIs as being a non-pricing item in isolation from the pricing mechanism. To me it's far more important to make sure you have your incentives aligned correctly. So you're not inadvertently creating incentives for the infrastructure owner to over promise and under deliver or you know, gold plate a service, or on the other hand, to scrimp on a service.

So we've had goes at trying to define KPIs in many different regulated infrastructure spaces, and actually we found that it is much better to have proper engagement, transparency, and consultation than to try and define out an exhaustive set of KPIs because you're never going to be able to do it.

Ms Coco: Really good feedback. Thanks very much, Frank. Thank you all very much again for your comments and your contributions to that session on non-price aspects of the framework. We'll move ahead now to the final session which deals with pricing provisions, and I'll pass over to Jess.

Session 4 – Pricing provisions

1.9 IPART presentation

Ms Robinson: Thanks Michelle. So one of the key parts of the existing undertaking is the pricing principles. It currently sets out 2 key pricing requirements. The floor test which is the minimum prices that service providers must charge access seekers, and also the ceiling test, which is the maximum amount of revenue that service providers can earn from all access seekers in a network.

We're proposing to maintain these principles, but also add a couple more. So the first is that changes to access prices should reflect commercial requirements, such as an increase in the cost of providing service. So this would prevent access providers from suddenly unreasonably increasing prices once an access seeker has heavily invested in using the network.

We're also proposing that access seekers competing in the same downstream market should pay the same access price for the same service, except where there is a cost difference. And this helps protect against distorting competition in downstream markets.

We're interested in your views on what characteristics define a service, for example, are different rail paths at different times of the day or different times of the year different services, and therefore should price differences be allowed?

So going into a little bit more detail on the existing pricing principles. The floor test is a requirement that prices recover the direct and incremental costs of providing access. And this is not something that IPART currently checks as part of its compliance process.

So we're proposing that the first limb of the floor test would be added to the compliance regime. So this would mean that access providers would need to demonstrate that prices recover the direct costs of access, so the wear and tear on the network that can be attributed to each service.

The second limb of the floor test the incremental costs of just having the line open. So maybe some of the safety costs Jonathan that you mentioned earlier would not be subject to the compliance regime. So the incremental cost can either be recovered from access seekers or government CSOs as is the case currently.

However, we think that there is the additional transparency around the direct costs would help protect access providers from access seekers offering prices that are below costs and also help access seekers from cross-subsidising other access seekers.

We're not proposing that IPART would have any enforcement role if prices don't meet the floor test. But in the event of arbitration the floor test would guide an arbitration decision so that prices aren't set below the direct and incremental costs of providing a service.

So we are interested in your views on whether IPART should assess the first limb of the floor test as part of its compliance regime, and also whether stakeholders are aware of any prices that are currently being set below the floor. In particular, the direct costs of providing the service, which is the first limb of the floor test.

Moving on to the ceiling test. So this is the requirement that access providers cannot earn more revenue than the cost to providing the service to an access seeker or group of access seekers. We've made quite a few recommendations on how the cost to providing services is calculated. There's a couple of changes. But really for the most part our recommendations are clarifications or just affirming the status quo, rather than fundamental changes to the existing methodology.

So, for example, we're proposing that the regulatory asset base would continue to be valued using a DORC methodology. So no changes in that regard. One area where we are proposing to make a minor change is that for the purpose of calculating depreciation, IPART would set asset lives rather than mine lives in the Hunter Valley, as we currently do. And we would do this or continue to do this based on the economic life of the asset taking into account future demand rather than the engineering life of the asset.

Currently we're prevented in the undertaking from considering mine lives more than once every 5 years, and we're proposing to provide a little bit more flexibility around this, so we could set asset lives more frequently to respond to things like power station closures in a more timely way.

Similarly, we're recommending additional flexibility in how often we update the rate of return. So we can use a trailing average cost of depth which is consistent with IPART's standard WACC methodology.

We've also made some recommendations on what happens when the ceiling test is breached. If access providers do over recover revenue, we're recommending that they must refund the difference to access seekers via a lump sum payment within 6 months of the compliance decision.

And finally, there's a few recommendations on the investment consultation framework which we've touched on already. So we're proposing that there would be clear requirements on access providers to provide access seekers with greater input into capital expenditure and network planning decisions that they fund.

So this consultation would inform whether IPART would allow a new capital expenditure to be rolled into the regulatory asset base and recovered through access charges. And we're recommending also allowing for access providers to capitalise losses for new investment.

So if there's under recovery on a new line in a ramp up phase, this could be recovered later down the track. So there's a couple of questions set out on this slide on the issues I've just run through. But we're also interested in any other feedback that you have on our proposed pricing principles and calculation methodologies. Thanks.

1.10 Questions and discussion

Ms Coco: Thanks very much, Jess, for that for that summary and also the questions which are up on the slide. Would anyone like to raise any of those, have a go at those or anything else which is not on the slide. Adrian.

Mr Kemp: Hi everyone it's Adrian Kemp from Houston Kemp. Look it would be remiss of me to not say anything about the pricing principles, I suspect, although I just wanted to make the point at the outset, that I think it's probably not the most critical issue in this regulatory framework. And I think that's a relevant thing to say, because as we've heard from some of the other participants here today. There is certainly competitive pressure for general freight from road. We know historically that for all of the networks that TAHE is responsible for apart from the Hunter Valley, we haven't been anywhere near the ceiling test.

And there are many historical and other reasons as to why that's the case. And so we need to be mindful of being very proportionate about what the compliance activity would need to be, particularly because having just done this recently there is a lot of effort involved in thinking carefully through the allocation of costs between the various networks how that fits into the various definitions, what review processes IPART itself might go through, and therefore, as a consequence, really sort of what difference it makes from an incentive perspective for achieving the overall regulatory framework objective of trying to fundamentally maximise the efficiency and effectiveness of rail access. So I just wanted to make that point sort of upfront.

Look in terms of the specifics. I think there's some really great suggestions here, you know particularly in relation to the points around access prices changing with costs. I think it's important that the access price system do change as a consequence of costs changing, and it is surprising that that isn't currently part of the existing framework.

There's definitely some questions about the floor test and how that fits into the framework. I think that's an area that we're looking at in some detail in order to, and we'll come back to you in terms of the submission as to what our views are on that.

I think it's great and important for there to be additional flexibility as it relates to depreciation and setting asset lives rather than the mine life. I think we would all recognise that there's been some constraints there that have been problematic, and I guess this goes to Carmel's points at the outset that the system is changing and we need the regulatory framework to be more agile and flexible to those changes to be able to accommodate that.

So there were probably just 2 areas of concern. The first would be the recommendations regarding the inclusion of, sorry the exclusion a major periodic maintenance capital expenditure from the definition of capital expenditure that's included in the definition of full economic costs. I hope everyone's still keeping up with me there.

I guess we are currently unconvinced that there is a financial or economic reason for excluding that and indeed there is many practical and implementation challenges that would arise if MPM capex was excluded. We also don't believe that there is double counting in the treatment of that under the current framework and I'm happy to go into detail on that but I'm sure that would bore most people in this room. But I think it's important to just have that on the record.

And the second point is regarding the setting of rate of return. I think it's very important and helpful to adopt the IPART rate of return framework. It's been problematic, I think, probably for IPART and everyone else to have different frameworks applying to the setting of the WACC in this context. So I think that's a useful step forward.

I think it's also quite useful to have a different rate of return for those networks where we are approaching full-economic costs for the Hunter. That said, there's also a merit in IPART setting a more benchmark rate of return for access providers such as TAHE, because it is useful to have that benchmark for a range of non-regulatory purposes, and so I would encourage IPART to continue to do so as part of the future arrangements.

Ms Coco: Thanks for those comments, Adrian. Any other comments in the room, Frank.

Mr Coldwell: So just a couple of brief comments. So obviously as has been recognised, I think the position of the Hunter Valley is a little bit different in both in terms of the market in which it operates, but also there's an extant price mechanism under the existing voluntary undertaking.

So to the extent that IPART does get asked to function as the fall-back regulator we wish to have regard, well we wish IPART to have regard to those existing parameters. Yeah, in particular, that asset base, which was originally based on a DORC, but it has been rolled over under the processes of the undertaking for many years, and to the carryover of other things like the existing unders and overs balance.

We note IPART's approach on the trailing average cost of debt being a preference. Obviously under the existing undertaking the ACCC looks at it on the day. The difference there it could be potentially significant in forthcoming years, and we do have a concern as to whether that's going to create an incentive for instability trying to sort of switch between the 2 regimes. Hopefully, ARTC would not engage in any such activity, but has the potential to create that incentive where there's 2 quite different approaches to a cost of debt.

Ms Coco: Thank you for that. Nicholas.

Mr Angelos: I just had a couple of comments I could add. The question about the different types of services. Again, it comes down to different markets. We pitch to each of our customers to meet their needs in their markets, and keeping that in mind

when we talk about costs of keeping the network open. There are some branch lines that probably don't see a train for 3 to 5 years because of drought. How we protect our investment in that so we're investing in grain wagons and locomotives, maintaining crews etcetera but we need to have some surety of access over a period of time.

The second point I could make is that again taking that step back thinking about how a person uses the national rail network. The pricing signals between each of the different networks is not consistent. It can create perverse behaviours from operators.

Some networks want you to run bigger or longer trains. Some want you to be shorter and faster. How you structure a pricing signal to the industry needs to be in some way reflective of the capacity of both your network, and how the adjoining network operates. That's a challenge. I don't think it's an easy answer to it. But treating each network as a standalone is a challenge from an operator's perspective. If we're trying to get a better outcome for the nation. But they're the 2 points I'd like to make.

Ms Coco: Thank you very much Nicholas. We've got a question online from Dean, or perhaps a comment. Thanks, Dean.

Mr Gannaway: Thank you. A couple of questions. The price differentiation arrangements refer to differentiation on the basis of cost. Conventionally across most regulatory particularly rail regulatory arrangements, that differentiation is normally expressed as differentiation on the base of cost or risk. So we're curious as to why the risk element has been left out of that.

There's a reference to the requirement to publish negotiated access charge outcomes. We see this as some potential issues or problems or difficulties with that, so to the extent that the price has been negotiated on the basis of cost or risk to that specific individual rail operator, how do you actually go about disclosing that without breaching the confidentiality or the commercial interest of the access seeker.

We think a better model is perhaps the WA Code model which allows an access seeker to ask the regulator for an opinion on the reasonableness of that of the offered price with the price discrimination obligations. That would actually potentially avoid the need to publish confidential information.

The issue there is a broader issue around taking the price differentiation arrangements too far. So to the extent that you standardise a tariff in terms to a broad range of services, then that in itself can actually stifle innovation.

And within the above rail haulage market as well. We've had numerous instances across multiple network providers where we've thought to introduce different types of operations which actually differ. So the characteristics of the services help materially differ. But there are some consistencies in the market we operate. So it is important that we that the and we will respond to the draft discussion paper around some of these issues. But it's preferable not to actually tighten or broaden those differentiation obligations too far. Thanks.

Ms Coco: Mike.

Mr Smart: Thanks. I just like to clarify a few things relating to the questions that Dean just raised. So just on the publication of prices, we are advocating complete publication of all access prices, both negotiated prices and standard offers, and we feel that transparency is very valuable and would outweigh any countervailing considerations.

Now as to whether the publication of prices would jeopardise some commercially sensitive information. All that we're saying would be published is the price. So all of the details that go with that about the risk arrangements, or special contractual provisions. We're not saying that that needs to be published just the price.

And then, on the question of the price discrimination, we recognise that different commodities have different ability to pay, and so that is certainly a factor that would legitimise different prices. The clause that I think you are referring to is about access prices potentially affecting downstream competition.

And here we are focusing on a situation where we've got 2 access seekers or end customers who are in competition with each other in some downstream market. And what we're saying there is that any price differences between those access contracts should be strictly driven by cost, and perhaps we can broaden that to look at risk, to the extent that risk is a cost factor also. So that's a good suggestion. We'll look at that one. But really this sort of cost-only kind of rule is about this being neutral between firms that compete with each other.

Now, I'll just take the liberty of being on the microphone to ask a question myself, and I just wanted to ask Jonathan at ARTC - you spoke at the beginning about the floor test, and you intimated that you had some views on the floor test. I think we'd be interested to understand what your feelings are about the usefulness and the necessity of having a floor test.

Mr Teubner: Thanks Mike. I was hoping to stay quiet on this one. I think I'm just picking up on what Dean was saying before, that in terms of the calculation of the floor test and the direct cost that there is a significant, there is an element of regulatory burden and cost and effort to go and do that segment by segment across an entire national network. Sorry Adrian, not Dean.

And I guess what we would like to see is a balance in terms of the sort of imposition of that burden to go through that costing approach to develop a number that doesn't actually determine the commercial outcomes that we engage with customers on but just becomes like a transparency, because the sort of burden of that costs sits wholly and solely on ourselves, and can't pass that through because effectively you're a price taker in some respects. So it's just making sure that the need and the use of the data sort of suits the cost of the provision of it.

So just a bit of pragmatism in respect of how that would apply, you know, thinking off the top of my head, which is dangerous, but maybe have a process where, if an access seeker has concerns with the sort of provision of that floor testing that's being used in a particular way, that it can seek transparency on that, and sort of run through a process around that rather than just having it as a per se.

And then, if you do that then you bear the outcome of well, if the floor test says, well, you actually are below the floor, then you cop an increased price, or something like that. That there's a balance of outcome to suit the burden, I think would be fair. It's just more really around making sure that the cost of the provision of the data is consistent with the use of it, rather than just sort of having a per se obligation to develop something for the sake of it.

And whilst I've got the microphone I think in terms of the sort of other issues around the ceiling test and depreciation and how you define the networks that the need to sort of define them from a use basis, and what the customers are is really important.

And I think, in terms of what Frank was saying, that we generally support most of those principles in terms of consistent, noting that I would just say that if you have a trailing debt approach, that the trailing debt, you know, like in the instance where we've got an ACCC undertaking that has a particular term, or you're only able to vary that undertaking through an ACCC process in that term. So a trailing debt approach doesn't create an annual trigger because you've got the agency approach and the IPART one, but noting that there are some substantial differences in their WACC methodology beyond just trailing debt that also exist.

Ms Coco: Thank you very much for that Jonathan. Deborah. I can see you have your hand up. Would you like to go next?

Ms Cope: I agree there is cost involved in calculating the floor test. So my questions for the users of rail line and people will be seeking access. Would you find that information useful? Is there a benefit to offset that cost?

Ms Coco: Would anyone in the room or online like to have a go at that one. Dean, I can see you have your hand up was that in relation to or in response to Deb's question?

Mr Gannaway: It's in response to the question from Deb. The floor depends on where the negotiated outcomes likely to sit. So that floor, that costs data in most regularly frameworks that the obligation is to want to know an access application is made that the parties to provide details of the price, the costs, and how the price has been derived. So I guess the question is fundamentally is, that is there benefit in actually determining that upfront, or is it essentially a requirement to provide it in response to an access application, probably depends on the frequency of applications you're going to get.

But to the extent to Mike's point earlier about transparency knowing what the floor, costs are can allow an end user or a rail operator to determine whether there's effectively likely to be a viable service before making application.

So there are some potential efficiencies to be derived, and not readily obvious from providing that cost information upfront as well. But I do take Jonathan's point there are costs of collecting and maintaining that data. It's data they would ordinarily need to collect and maintain to provide in response to an access application. So it's really just a question of what's the frequency with which you would ordinarily expect to be collecting and publishing that information anyway.

Ms Coco: So thanks very much, Dean. Back to you, Jonathan.

Mr Teubner: Thanks it's not a debate with Dean because I'd lose that one entirely. But I think it's one in terms of that there's the other issue in terms of pricing, and the sort of justification the methodology of pricing that you know in large part there are existing network segments where there's very sort of, you know, long-term pricing that's applied

that's basically been sort of increased by CPI over an extended period of time that the original sort of determination for that pricing goes back into the midst of time; that the ability to come back and develop up a clear and detailed methodology for the current is probably challenging.

And then, I think, where you then get to because there's transparency, you know, that the key point on that is transparency around that pricing. Where you've got transparency and non-discrimination. That there's a clear steer already in terms of the you know assessment of the services for existing networks that have existing pricing, is to what the profitability of the service might be given that, unless it's a new service, or it's a new segment, and then that is a different matter.

Ms Coco: Thank you Jonathan. Benedicte, thank you.

Ms Collins: Just in response to Jonathan's comments. There is no doubt that where the pricing certainly on our network has evolved it has been a long trail of CPIs, and so linking it to the original trail of commodities and the level of services provided is kind of becoming more difficult.

So we see that as an opportunity to also perhaps not necessarily reset but review the pricing in line of the whole review in terms of providing better services, and linking the pricing to the services.

Really take your point, Nicholas, around having a whole of the network approach and consistency in terms of the outcomes that we are deriving. So I think there's been some really good suggestion, including you know, transparency, perhaps on the floor test and see whether actually the service makes sense or not.

Ms Coco: Thank you very much. Okay if no one has any further comments or questions we might bring this session to a close. I'll pass back to Carmel now. Thank you.

1.11 Closing remarks

Ms Donnelly: Thank you. Look I'm not going to attempt to summarise. You know there's that tradition at the end of a session where you know all the things we heard that will take too long. But I do want to thank you all for all of your input today. It's been an enormously helpful discussion from our perspective, and I hope that it's been useful to you as well. We value everyone's feedback and we absolutely consider it. We'll consider everything that's been said today, and there is quite a lot of food for thought there for us, so we'll take that away and do some work on it.

I just want to let you know that there will be following this public hearing we will in a few days, I think publish a transcript on our website, and we will also provide a link to a video recording, so that it's completely transparent as to what was said. We are inviting, as you know, submissions to our Draft Report by the 16th of December.

So very much welcome people elaborating on any of the things that they think you need to be got across, and that we need to understand in your submissions and I think there's been some suggestions there of elements that might be useful. I hope that it's been useful for you to see as well as us what might be the areas where there are different points of view, where it would be worthwhile you going into a bit of detail and backing up a particular position if you have one, and that would help us, because we're also going to be looking at where is there some level of broad agreement. And where are the areas where there needs to be more work. And we'll be looking very much for good input from different stakeholders in the submissions.

So of course, the next step then would be for us after we've got the submissions we'll consider everything that's in the submissions, as well as the rest of the consultation and finalise our report to the Minister in May next year.

So just finally if there is information that you would like to share or you have questions, you're most welcome to get in touch with us after today. Matthew Tsirikas, who has been sitting here, and that's his phone number and email, and he'll be your first port of call. So thank you Matthew for doing that. And you can also get the contact details on our website, and we will have them inside our reports as usual, and so you can find them there as well.

So that said, let me just end with a final thank you to everyone who's participated today. Both the IPART team and the people who are supporting this new hybrid world that we live in where we're working both online and in person and also everyone who's participated. Thank you very much for making the time. It's been extremely useful. Thank you. I will just add you are welcome to join us for something to eat if you'd like to and have a final little chat if you've got a little bit of time. Thank you.

Ms Coco: Thanks, Carmel, and thank you again. Everyone online and in the room.

Ms Cope: Thanks everyone.